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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,872	10/16/2003	Roger D. Percy	RDPA121854	1376

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EXAMINER

ISSING, GREGORY C

ART UNIT	PAPER NUMBER
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3662

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/686,872

Applicant(s)

PERCY ET AL.

Examiner

Gregory C. Issing

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/2/04, 3/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The election of Group I, claims 1-52, is acknowledged. The instant application is related to application 10/318,422 which is also directed to a method for determining the effectiveness of media displays including (1) employing a satellite positioning system to track and store geo data relating to the movements of a device and (2) analyzing the geo data to determine the exposure of the device to media displays, i.e. effectiveness. Applicants are required to maintain a clear line of distinction between the two applications in order to avoid a double patenting rejection. At present, the application 10/318,422 is mostly directed to specifics of the monitoring devices whereas the instant application is more directed towards aspects of the system as a whole.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 36, 37, and 46-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 36 and 37 are not understood; how does the reach/frequency value which is understood to be the number of monitoring units seeing a particular media display per length of time/number of times a mobile terminal encounters media displays provide information with respect to the proximity between user location and media display location?

Claim 46 is not clear with respect to the language "matching said potential locations to geo data locations." Do the geo locations correspond to the previously recited data specifying a plurality of locations traversed by a monitoring device? The language "determining for said potential location" is not clearly written since a single one has not been previously identified. The language is believed should read either "determining for each said potential location" or "determining for said potential locations."

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-35 and 38-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Hendrey et al (6,647,269).

6. Hendrey et al disclose a method and system for analyzing advertisements delivered to mobile units, i. e. monitoring units, including a location tracking database 132 that receives and stores geo-location data derived from DGPS position of a mobile user 110, a location sensitive advertising content generator 131 that generates an advertisement based on the location of a mobile user and a location of a business at the location, and an advertising effectiveness database 133 wherein the effectiveness of the advertisement is determined based on the location of the mobile terminal and the location of the advertisement in concert with the proximity, elapsed time, subsequent movement of the mobile terminal, and purchasing. The various position technologies are referenced in col. 6, and include differential correction of GPS as well as use of physical characteristics of area, i.e. map matching. The data is logged at the station 105 and therefore

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compiles the number of mobile users that were targeted by the advertisement, i.e. reach, as well as the number of advertisements targeted to a user, i.e. frequency.

7. Claims 1-35 and 38-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Stewart (6,546,257).

8. Stewart discloses the claimed method for determining the effectiveness of a media display including a mobile terminal 28 that is provided with a positioning means, such as GPS, so as to allow tracking of the mobile terminal, a station 17 including a plurality of databases, a processor and a communication means, and a merchant user 14. The station aggregates the geo-location data provided by the mobile terminal for tracking purposes and trend analysis, compares it to an information location database defining the positions of targeted media displays, and based on the proximity of the mobile terminal location and the targeted media display provides a targeted advertisement. The provision of the advertisement to the mobile terminal on the basis of the predetermined proximity is a measure of the effectiveness of the media display, i.e., it is positively provided to the mobile terminal.

9. Claims 1, 2, 4-8, 12-32, 44 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Millington et al (6,360,257).

10. Millington et al disclose a method for providing location-based multi-media annotation including associating each of a plurality of annotations with each of a plurality of locations along a route (the claimed locations of media displays), moving a vehicle along a route, determining a position of the vehicle relative to the route and the plurality of locations, comparing the position of the vehicle with the plurality of locations, and displaying the media based upon the comparison. The displaying of the media upon matching meets the scope of rating the effectiveness of the media display since a media annotation, including an advertisement, is positively provided to a user. GPS technology includes use of differential corrections as well as error identification (i.e. integrity data).

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11. Claims 46-52 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The IDS is acknowledged and considered. Note that the references are replete with the conventionality of the use of frequency, reach and GRPs as measure of effectiveness as well as the use of map matching, corrections to GPS and GIS.

Cannon discloses a method and apparatus for analyzing data and advertising optimization including the various indicia well-known in the art for providing such optimization including exposure, reach, frequency and scoring. Cannon is described in the context of television viewing, though it is contemplated that person-to-person data for any type of media may be utilized.

Ceresoli et al disclose a system and method for obtaining comprehensive radio statistics capable of producing detailed reports which can be made available to broadcasters, corporate advertisers, advertising agencies and the like.

Giraud discloses a system and method for tracking consumer exposure to media advertisements wherein the time duration and advertisement type are utilized to generate effectiveness of display via exposure information.

Powers discloses the broadly claimed concept of determining the effectiveness and cost of outdoor advertising by counting the number of cars that pass by the outdoor display. Based on collected data and statistical data, a list of selected locations deemed to be most effective is determined. Powers is directed to tracking the location of a vehicle that upon detection of its instantaneous position and stored selected positions, provides/changes a media display affixed thereto.

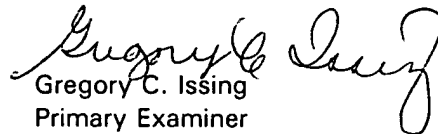
O'Neil discloses use of selecting budget constraints in the targeting of advertisements to mobile terminals.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory C. Issing whose telephone number is 703-306-4156. The examiner can normally be reached on Monday - Thursday 6:00 AM- 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on 703-306-4171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gregory C. Issing
Primary Examiner
Art Unit 3662

gci